From: Marion Bates
To: Microsoft ATR
Date: 1/23/02 4:46pm
Subject: Microsoft Settlement

To Whom It May Concern:

I am opposed to the proposed settlement in the Microsoft antitrust trial. I feel that the current proposed settlement does not fully redress the actions committed by Microsoft in the past, nor inhibit their ability to commit similar actions in the future.

In particular, I am concerned that the PFJ fails to prohibit anticompetitive license terms currently used by Microsoft. For example: Microsoft created intentional incompatibilities in Windows 3.1 to discourage the use of non-Microsoft operating systems. A portion of the 1996 Caldera v. Microsoft antitrust lawsuit illustrates how Microsoft has used technical means anticompetitively. Quote from http://www.kegel.com/remedy/remedy2.html, Dan Kegel's essay on the PFJ:

"Microsoft's original operating system was called MS-DOS. Programs used the DOS API to call up the services of the operating system. Digital Research offered a competing operating system, DR-DOS, that also implemented the DOS API, and could run programs written for MS-DOS. Windows 3.1 and earlier were
not operating systems per se, but rather middleware that used the DOS API to interoperate with the operating system. Microsoft was concerned with the competitive threat posed by DR-DOS, and added code
to beta copies of Windows 3.1 so it would display spurious and misleading error messages when run on DR-DOS. Digital Research's successor company, Caldera, brought a private antitrust suit against Microsoft in 1996. (See the original complaint, and Caldera's consolidated response to Microsoft's motions for partial summary judgment.) The judge in the case ruled that

'Caldera has presented sufficient evidence that the incompatibilities alleged were part of an anticompetitive scheme by Microsoft.'

That case was settled out of court in 1999, and no court has fully explored the alleged conduct.

The concern here is that, as competing operating systems emerge which are able to run Windows applications, Microsoft might try to sabotage Windows applications, middleware, and development tools so that they cannot run on non-Microsoft operating systems, just as they did earlier with Windows 3.1.

The PFJ as currently written does nothing to prohibit these kinds of restrictive licenses and intentional incompatibilities, and thus encourages Microsoft to use these techniques to enhance the Applications Barrier to Entry, and harming those consumers who use non-Microsoft operating systems and
wish to use Microsoft applications software."

The vast majority of the provisions within the settlement only formalize the status quo. Of the remaining provisions, none will effectively prohibit Microsoft from abusing its current monopoly position in the operating system market. This is especially important in view of the seriousness of Microsoft's past transgressions.

Most important, the proposed settlement does nothing to correct Microsoft's previous actions. There are no provisions that correct or redress their previous abuses. They only prohibit the future repetition of those abuses. This, in my opinion, goes against the very foundation of law. If a person or organization is able to commit illegal acts, benefit from those acts and then receive as a "punishment" instructions that they cannot commit those acts again, they have still benefited from their illegal acts. That is not justice, not for the victims of their abuses and not for the American people in general.

While the Court's desire that a settlement be reached is well-intentioned, it is wrong to reach an unjust settlement just for settlement's sake. A wrong that is not corrected is compounded.

Sincerely,

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